

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

Eastern

DISTRICT OF

Michigan

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

Matthew Mercer-Kinser
61 East Street
Oxford, Michigan

(Name and Address of Defendant)

CASE NUMBER: **08-30235**

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about April 30, 2008 in Oakland county, in the Eastern District of Michigan defendant(s) did, (Track Statutory Language of Offense)

knowingly distribute child pornography, and did knowingly possess child pornography that had been previously transported in interstate commerce; to wit, on or about April 30, 2008, in Oxford, Michigan, defendant possessed child pornography images on a personal computer, which images he sent to an undercover Australian Federal Police Officer via the Internet.

in violation of Title 18 United States Code, Section(s) 2252(a)(2) and (5)(B).

I further state that I am a(n) Special Agent of the FBI and that this complaint is based on the following facts:

Official Title

See Attached Affidavit hereby incorporated by reference as if fully restated herein.



Yes



No

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MAY 20 2008
CLERK'S OFFICE
DETROIT

Continued on the attached sheet and made a part hereof:

AUSA - John O'Brien

Sworn to before me and subscribed in my presence,

Signature of Complainant

Brett E. Leatherman

Special Agent

Federal Bureau of Investigation

May 20, 2008

Date

at

Detroit, Michigan

City and State

Mona K. Majzoub, United States Magistrate Judge

Name & Title of Judicial Officer

Signature of Judicial Officer

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

IN THE MATTER OF THE ARREST OF:)

MATTHEW MERCER aka)

MATTHEW MERCER-KINSER)

AFFIDAVIT

I, Brett E. Leatherman, a Special Agent (SA) with the Federal Bureau of Investigation (FBI), Detroit Division, Michigan, being duly sworn, depose and state as follows:

INTRODUCTION

1. Your affiant is a Special Agent of the Federal Bureau of Investigation (FBI) and has been employed as such since May 2003. Your affiant is currently assigned to the Detroit Division of the FBI, Oakland County Resident Agency, located in Troy, Michigan. Your affiant's duties include the investigation of various violations of federal criminal law, including matters involving the online exploitation of children, particularly in violation of Title 18, United States Code (U.S.C.) Sections 2252 and 2252A, which criminalize the possession, receipt, and transmission of child pornography.

- 1 2. Your affiant is a "federal law enforcement officer" within
2 the meaning of Rule 41(a) of the Federal Rules of Criminal
3 Procedure.
- 4 3. Your affiant makes this affidavit in support of an
5 application for a warrant to arrest Matthew Mercer, also
6 known as Matthew Mercer-Kinser (hereinafter referred to as
7 "Mercer").
- 8 4. The statements in this Affidavit are based in part on
9 information provided by law enforcement officials with the
10 Australian Federal Police (hereinafter referred to as
11 AFP), Special Agents of the FBI, other law enforcement
12 officers, information provided by other personnel
13 specially trained in the seizure and analysis of computers
14 and electronic media, my investigation of this matter, and
15 my experience and training as a Special Agent of the FBI.
16 Since this affidavit is being submitted for the limited
17 purpose of securing an arrest warrant, I have not included
18 each and every fact known to me concerning this
19 investigation. I have set forth only the facts that I
20 believe are necessary to establish probable cause to
21 believe that Matthew Mercer committed acts in violation of
22 18 U.S.C. § 2252.

23
24 **DEFINITIONS**

- 25
- 26 5. The following definitions apply to this Affidavit, as well
27 as Attachment A to this Affidavit:
- 28 a. "Child Erotica," as used herein, means materials or

1 items that are sexually arousing to persons having a
2 sexual interest in minors but that are not, in and of
3 themselves, obscene or that do not necessarily depict
4 minors in sexually explicit poses or positions;

5 b. "Child Pornography," means any visual depiction,
6 including any photograph, film, video, picture, or
7 computer or computer-generated image or picture,
8 whether made or produce by electronic, mechanical, or
9 other means, of sexually explicit conduct, where the
10 production of such visual depiction involves the use of
11 a minor engaging in sexually explicit conduct. (See 18
12 U.S.C. § 2256(8)(a) only);

13 c. "Visual depictions" include undeveloped film and
14 videotape, and data stored on computer disk or by
15 electronic means, which is capable of conversion into a
16 visual image. (See 18 U.S.C. § 2256(5));

17 d. "Sexually explicit conduct" means actual or simulated
18 (a) sexual intercourse, including genital-genital,
19 oral-genital, or oral-anal, whether between persons of
20 the same or opposite sex; (b) bestiality; (c)
21 masturbation; (d) sadistic or masochistic abuse; or (e)
22 lascivious exhibition of the genitals or pubic area of
23 any persons. (See 18 U.S.C. § 2256(2));

24 e. "Computer," as used herein, is defined pursuant to 18
25 U.S.C. § 1030(e)(1), as an "electronic, magnetic,
26 optical, electrochemical, or other high speed data
27 processing device performing logical or storage
28 functions, and includes any data storage facility or

1 communications facility directly related to or
2 operating in conjunction with such device;"

3 f. "Computer hardware," as used herein, consists of all
4 equipment which can receive, capture, collect, analyze,
5 create, display, convert, store, conceal, or transmit
6 electronic, magnetic, or similar computer impulses or
7 data. Computer hardware includes any data-processing
8 devices (including, but not limited to, central
9 processing units, internal and peripheral storage
10 devices such as fixed disks, external hard drives,
11 floppy disk drives and diskettes, and other memory
12 storage devices); peripheral input/output devices
13 (including, but not limited to, keyboards, printers,
14 video display monitors, and related communications
15 devices such as cables and connections), as well as any
16 devices, mechanisms, or parts that can be used to
17 restrict access to computer hardware (including, but
18 not limited to, physical keys and locks);

19 g. "Computer software," as used herein, is digital
20 information which can be interpreted by a computer and
21 any of its related components to direct the way they
22 work. Computer software is stored in electronic,
23 magnetic, or other digital form. It commonly includes
24 programs to run operating systems, applications, and
25 utilities;

26 h. "Computer-related documentation," as used herein,
27 consists of written, recorded, printed, or
28 electronically stored material which explains or

1 illustrates how to configure or use computer hardware,
2 computer software, or other related items;

3 i. "Computer passwords and data security devices," as used
4 herein, consist of information or items designed to
5 restrict access to or hide computer software,
6 documentation, or data. Data security devices may
7 consist of hardware, software, or other programming
8 code. A password (a string of alpha-numeric
9 characters) usually operates a sort of digital key to
10 "unlock" particular data security devices. Data
11 security hardware may include encryption devices,
12 chips, and circuit boards. Data security software of
13 digital code may include programming code that creates
14 "test" keys or "hot" keys, which preform certain
15 pre-set security functions when touched. Data security
16 software or code may also encrypt, compress, hide, or
17 "booby-trap" protected data to make it inaccessible or
18 unusable, as well as reverse the progress to restore
19 it;

20 j. "Internet Protocol address" or "IP address" refers to a
21 unique number used by a computer to access the
22 Internet. IP addresses can be dynamic, meaning that
23 the Internet Service Provider (ISP) assigns a different
24 unique number to a computer every time it accesses the
25 Internet. IP addresses might also be static, if an ISP
26 assigns a user's computer a particular IP address which
27 is used each time the computer accesses the Internet;

28 k. The terms "records," "documents," and "materials," as

1 used herein, include all information recorded in any
2 form, visual or aural, and by any means, whether in
3 handmade form (including, but not limited to, writings,
4 drawings, painting), photographic form (including, but
5 not limited to, microfilm, microfiche, prints, slides,
6 negatives, videotapes, motion pictures, photocopies),
7 mechanical form (including, but not limited to,
8 phonograph records, printing, typing) or electrical,
9 electronic or magnetic form (including, but not limited
10 to, tape recordings, cassettes, compact discs,
11 electronic or magnetic storage devices such as floppy
12 diskettes, hard disks, CD-ROMs, digital video disks
13 (DVDs), Personal Digital Assistants (PDAs), Multi Media
14 Cards (MMCs), memory sticks, optical disks, printer
15 buffers, smart cards, memory calculators, electronic
16 dialers, Bernoulli drives, or electronic notebooks, as
17 well as digital data files and printouts or readouts
18 from any magnetic, electrical or electronic storage
19 device).

- 20 1. "Minor " means any person under the age of eighteen
21 years. (See 18 U.S.C. § 2256(1)).

22
23 **BACKGROUND ON COMPUTERS AND CHILD PORNOGRAPHY**
24

- 25 6. Computers and computer technology have revolutionized the
26 way in which individuals interested in child pornography
27 interact with each other. Child pornography formerly was
28 produced using cameras and film (either still photography

1 or movies). The photographs required darkroom facilities
2 and a significant amount of skill in order to develop and
3 reproduce the images. There were definable costs involved
4 with the production of pornographic images. To distribute
5 these on any scale required significant resources. The
6 photographs themselves were somewhat bulky and required
7 secure storage to prevent their exposure to the public.
8 The distribution of these wares was accomplished through a
9 combination of personal contacts, mailings, and telephone
10 calls.

11 7. The development of computers has changed this. Computers
12 basically serve four functions in connection with child
13 pornography and related offenses: production,
14 communication, distribution, and storage of the images.

15 8. Child pornographers can now transfer photographs from a
16 camera onto a computer-readable format with a device known
17 as a scanner. With the advent of digital cameras, the
18 images can now be transferred directly onto a computer. A
19 device known as a modem allows any computer to connect to
20 another computer through the use of telephone, cable, or
21 wireless connection. Electronic contact can be made to
22 literally millions of computers around the world.

23 9. The computer's ability to store images in digital form
24 makes the computer itself an ideal repository for child
25 pornography. The size of the electronic storage media
26 (commonly referred to as the hard drive) used in home
27 computers has grown tremendously within the last several
28 years. These drives can store thousands of images at very

1 high resolution.

2 10. The Internet and its World Wide Web afford collectors
3 of child pornography several different venues for
4 obtaining, viewing, and trading child pornography in a
5 relatively secure and anonymous fashion.

6 11. Collectors and distributors of child pornography also
7 use online resources to retrieve and store child
8 pornography, including services offered by Internet
9 Portals such as Yahoo! and Hotmail, among others. The
10 online services allow a user to set up an account with
11 a remote computing service that provides e-mail
12 services as well as electronic storage of computer
13 files in any variety of formats. A user can set up an
14 online storage account from any computer with access to
15 the Internet. Evidence of such online storage of child
16 pornography is often found on the user's computer.
17 Even in cases where online storage is used, however,
18 evidence of child pornography can be found on the
19 user's computer in most cases.

20 12. As is the case with most digital technology,
21 communications by way of computer can be saved or
22 stored on the computer used for these purposes.
23 Storing this information can be intentional, i.e., by
24 saving an e-mail as a file on the computer or saving
25 the location of one's favorite websites in, for
26 example, "bookmarked " files. Digital information can
27 also be retained unintentionally, e.g., traces of the
28 path of an electronic communication may be

1 automatically stored in many places (e.g., temporary
2 files or ISP client software, among others). In
3 addition to electronic communications, a computer
4 user's Internet activities generally leave traces or
5 "footprints " in the web cache and history files of the
6 browser used. A forensic examiner often can recover
7 evidence suggesting whether a computer contains peer to
8 peer software, when the computer was sharing files, and
9 some of the files which were uploaded or downloaded.
10 Such information is often maintained indefinitely until
11 overwritten by other data.

12 13 14 DETAILS OF THE INVESTIGATION

15
16 13. On March 31, 2008, an undercover employee (hereinafter
17 referred to as UCE) with the Australian Federal Police
18 (AFP) conducting a covert online investigation within
19 an Internet Relay Chat (hereinafter referred to as
20 "IRC") room titled, "#0!!!!!!!pedomoms" on the
21 "Undernet" servers. While in the IRC chat room, the
22 UCE engaged in a conversation with an unknown person
23 (hereinafter referred to as U/P) using the nickname:
24 "VeryOpenMind". The IP address used by the U/P was
25 70.222.180.205. During the conversation in IRC, the
26 U/P stated that he wished to trade on the Google Hello
27 program. The U/P added the UCE's undercover account to
28 his friends list. The suspect's Google Hello account

1 username was "Xynner", with Google Hello id 4579536,
2 and e-mail address: mynanoname@hotmail.com.

3 14. While conversing with AFP UCE in Google Hello, the U/P
4 stated that his name was Drake, and that he was a
5 private first class in the United States Army stationed
6 in Georgia on an Army base. U/P stated that he had a
7 son who was 2 1/2 years old whom he was sexually
8 molesting with his girlfriend, who was the son's
9 mother. U/P stated that he has sexual relations with a
10 number of family members, including his niece who was
11 five or six years old. U/P has a friend, Siren, who
12 was a "pedo" and who was about to have a child, and the
13 U/P was considering asking Siren to abuse the child
14 together.

15 15. The U/P sent 184 images to AFP UCE, 77 of which were
16 saved by the Google Hello program. Preliminary
17 assessment by the AFP confirms many of the images are
18 child exploitation material. U/P sent AFP UCE
19 photographs of himself, his partner, son, sister, and
20 niece.

21 16. On March 31, 2008, the AFP made an urgent official
22 referral to the Federal Bureau of Investigation (FBI)
23 Legal Attache (LEGAT) located in Canberra, Australia.

24 17. On April 2, 2008, Google Inc. responded to an
25 administrative subpoena served by the FBI, which
26 indicated that on April 30 to 31, 2008, one of the IP
27 addresses used to access the Google Hello account of
28 Xinner was 70.222.180.205.

1 18. On April 2, 2008, Hotmail responded to an
2 administrative subpoena served by the FBI, which
3 indicated that the last IP address which accessed the
4 e-mail address mynanoname@hotmail.com (associated with
5 the Google Hello account of Xinner) was 70.222.180.205.

6 19. On April 3, 2008, Verizon Wireless responded to an
7 administrative subpoena served by the FBI, which
8 indicated that on March 31, 2008 at 00:34:58 and
9 06:19:49 PDT, the IP address 70.222.180.205 was
10 assigned to the account of Verizon customer Matthew T
11 Mercer (hereinafter referred to as "Mercer"), billing
12 address of 61 East Street, Oxford, Michigan 48371.

13 20. On April 14, 2008, an analysis was conducted by the
14 Child Victim Identification Program (hereinafter
15 referred to as "CVIP") and the National Center for
16 Missing and Exploited Children (hereinafter referred to
17 as "NCMEC"). Two files were identified as containing
18 child victims who have been identified by law
19 enforcement, listed as:

- 20 a. /xynner/Images received/giga/3sis21.jpg - which shows
21 an adult male having vaginal intercourse with a young
22 female. The photo displays from approximately the top
23 of the stomach down on both the male and female.
- 24 b. /xynner/Images received/giga/child anal fuck cum piss
25 0001a.JPG - which depicts a young girl lying topless on
26 her back and wearing a pink dress with flowers on it.

27 21. On or about April 29, 2008, an FBI Special Agent in
28 Columbus, Georgia made contact with officials of the

1 United States Army, who advised that on March 31, 2008,
2 Mercer was located at Ft. Benning in Georgia, where he
3 resided in barracks. On April 22, 2008, Mercer
4 departed the military base for his home of record, 61
5 East Street, Oxford, Michigan as he was in the process
6 of being discharged from the Army.

7 22. On April 28, 2008, your affiant reviewed police reports
8 taken by Officers of the Oxford Police Department (OPD)
9 related to Mercer. On one OPD report, Mercer provided
10 his nickname as "Drake".¹

11 23. On April 28, 2008, your Affiant pulled a drivers
12 license photograph for a female (hereinafter referred
13 to as "Female 1") who was listed as Mercer's girlfriend
14 and/or mother of his child in numerous OPD reports.
15 Based on your affiants experience as an investigator,
16 this female resembles the same female who appeared in
17 pictures sent by "Xynner," and whom "Xynner" told the
18 AFP UCE was the mother of his child.

19 24. On April 29, 2008, a female relative (hereinafter
20 referred to as "FR") of Mercer's filed a police report
21 with the Oxford Police Department (hereinafter referred
22 to as "OPD"). While at OPD, FR told the OPD Officer
23 that Matthew Mercer was residing at 61 East Street,
24 Oxford, Michigan with her.

25 25. On April 30, 2008, the AFP UCE made additional contact
26 with Xynner through the Google Hello program, who sent

27
28 ¹It should be noted that this is the same name used by "Xynner" during his online chat
with the AFP UCE

1 approximately 100 images to the AFP UCE. The images
2 sent to the AFP UCE appeared to the AFP UCE to be of
3 children, in some cases younger than those sent in the
4 first session.

5 26. On May 12, 2008, your Affiant reviewed the images sent
6 by Xynner to the AFP UCE. The images were sent to your
7 Affiant by FBI Special Agents located in the FBI Legal
8 Attache in Canberra, Australia. Based on your Affiants
9 review, numerous images appeared to depict young
10 children engaged in oral sex, or sexual intercourse,
11 with older men. One picture appeared to include an
12 infant wearing a "onesy" lying on her back, being
13 manually manipulated by an adult male who appeared to
14 be having sexual intercourse with her.

15 27. On May 12, 2008, your affiant reviewed chat logs
16 between the AFP UCE and Xynner. During the chat Xynner
17 indicated that he was out of the United States Army
18 entirely and was located in the State of Michigan.
19 Xynner indicated that as soon as he got a digicam, his
20 first mission is to take pictures of his son. During
21 the chat, Xynner stated that he was hesitant to give
22 out his home address as he was "worried about the whole
23 law enforcement side of the coin."

24 28. On May 12, 2008, Verizon Wireless was served with a
25 Court Order seeking cell tower information related to
26 an air card with telephone number (248) 820-9175².

27
28 ²This is the air card number belonging to Matthew Mercer, which was provided by
Verizon Wireless pursuant to a Grand Jury Subpoena. This number was used to send the

1 Heather, an employee of Verizon Wireless, advised that
2 on both April 30, 2008 and May 1, 2008, the air card
3 assigned to Matthew Mercer was using a cell tower
4 located at 645C North Oxford Road, Oxford, MI. This
5 location is approximately one (1) mile from the
6 residence 61 East Street, Oxford, MI.

7 29. The above information indicates that on March 31, 2008,
8 Mercer, while residing at the United States Army Base
9 Ft. Benning in Georgia, and on April 30, 2008, Mercer,
10 while residing at the address 61 East Street, Oxford,
11 Michigan 48371, knowingly promoted and presented child
12 pornography in interstate and foreign commerce by means
13 of a computer in violation of Title 18 Section
14 2252(a)(3)(B). The pornographic images described
15 herein were transmitted via the Internet to the AFP
16 UCE.

17 18 CONCLUSION

19
20 30. Based on the above information, I believe that probable
21 cause exists to believe Matthew Mercer, knowingly
22 possessed, presented, promoted, and/or transmitted
23 child pornography, in interstate and/or foreign
24 commerce, by means of a computer, and in doing so
25 violated Title 18, USC Sections 2252A(a)(3)(B) and
26 2252(a)(1)(B).

27
28

pictues to the AFP UCE on March 31, 2008.

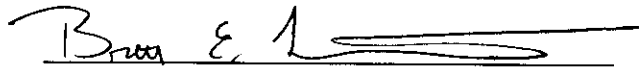
1 31. Title 18, USC Section 2252A(a)(3)(B) prohibits anyone
2 from knowingly advertising, promoting, presenting,
3 distributing, or soliciting through the mails, or in
4 interstate or foreign commerce by any means, including
5 by computer, any material or purported material in a
6 manner that reflects the belief, or that is intended to
7 cause another to believe that the material or purported
8 material is, or contains obscene visual depiction of a
9 minor engaging in sexually explicit conduct or visual
10 depiction of an actual minor engaging in sexually
11 explicit conduct. Title 18, USC Section 2252(a)(1)(B)
12 prohibits any person from knowingly transporting or
13 shipping in interstate or foreign commerce by any
14 means, including by computer or mails, any visual
15 depiction, if the producing of such visual depiction
16 involves the use of a minor engaging in sexually
17 explicit conduct; and such visual depiction is of such
18 conduct.

19 32. Title 18, USC Section 2252(a)(2) prohibits any person
20 from knowingly receiving, or distributing any visual
21 depiction that has been mailed, or has been shipped or
22 transported in interstate or foreign commerce, or which
23 contains materials which have been mailed or so shipped
24 or transported, by any means including by computer, or
25 knowingly reproduces any visual depiction for
26 distribution in interstate or foreign commerce or
27 through the mails, if the producing of such visual
28 depiction involves the use of a minor engaging in


1 sexually explicit conduct; and such visual depiction is
2 of such conduct.

3 33. Based on the facts related in this affidavit, I
4 respectfully request this court issue an arrest warrant
5 authorizing the arrest of Matthew Mercer, aka Matthew
6 Mercer-Kinser.

7
8 FURTHER AFFIANT SAYETH NOT.

9
10 
11 Brett E. Leatherman
12 Special Agent
Federal Bureau of Investigation

13 Subscribed and sworn to before me this 20th day of May, 2008.

14 
15 Mona K. Majzoub
16 U.S. Magistrate Judge
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